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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 97 205 50019 Office: CALIFORNIA SERVICE CENTER Date: JUL 12 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the nonimmigrant visa petition on August 12, 1997. Upon further review, the director determined that the beneficiary did not qualify for the classification sought. Accordingly, the director notified the petitioner of his intent to revoke the approval of the petition, and provided the petitioner an opportunity to respond. Following the petitioner's response, the director ordered that the prior approval of the petition be revoked. The Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted. The previous decisions of the director and AAO will be affirmed.

The petitioner is operating as a laundry and dry cleaning company. It seeks to employ the beneficiary as its executive director, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee. The director determined that the beneficiary was not employed in the foreign company in a primarily managerial or executive capacity.

Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). In the present matter, in a notice dated November 25, 1997, the director provided a statement of his intent to revoke pursuant to the regulation at 8 C.F.R. § 214.2(l)(9)(iii)(4): the statement of facts contained in the petition was not true and correct. As the petitioner was given an opportunity to respond, and did in fact submit evidence in rebuttal, the petition was properly revoked.

On appeal, the AAO concluded that the beneficiary had not been employed abroad in a primarily managerial or executive capacity. Beyond the decision of the director, the AAO determined that the beneficiary's proposed employment in the United States would not be in a primarily managerial or executive capacity.

In support of this motion to reopen, counsel for the petitioner submits "new evidence" that had not been previously provided to the petitioner by the beneficiary's foreign employer. Counsel asserts that the additional evidence establishes the beneficiary's "managerial/executive duties" in the foreign company.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in the present proceeding is whether the beneficiary was employed in the foreign company in a primarily managerial or executive capacity as defined at §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B).

In support of the present motion, counsel submitted: (1) an affidavit from the beneficiary; (2) the beneficiary's business card on which he is identified as the foreign company's general manager; (3) the foreign company's Employer Return of Remuneration and Pensions for the period ending March 31, 1997; (4) verification of the foreign company's insurance policy for the period of July 1996 through July 1997; and (5) invoices from the foreign company.

The petitioner submits the above-mentioned affidavit in response to a May 1995 investigation of the foreign company by the U.S. Consulate General in Hong Kong, which resulted in a finding that the beneficiary was not employed abroad in a primarily managerial or executive capacity. In the affidavit, dated April 27, 1999, the beneficiary stated that as the foreign company's general manager he was authorized to have sole control of the business operation, and outlined his job duties, which he stated were primarily managerial and executive. The beneficiary also stated that, with regard to the Consulate's investigation of the foreign company, the officer "did not ask me to produce any documents or evidence to show my managerial/executive capacities." The beneficiary further claimed in the affidavit that during an interview at the American Consulate he explained that his job duties "do not relate to daily laundry business operation[s] which are performed by other employees."

On review, the evidence submitted in the present motion does not establish the beneficiary's employment abroad in a primarily managerial or executive capacity. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Simply asserting in the affidavit that the beneficiary was employed abroad in a primarily managerial and executive capacity, and that the beneficiary did not perform any non-qualifying duties, such as cleaning, drying, and folding clothes, does not qualify as independent and objective evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Moreover, evidence that the petitioner creates after Citizenship and Immigration Services (CIS) points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. In this matter, the petitioner submitted an affidavit dated April 27, 1999, which is almost one month after the AAO's decision to dismiss the petitioner's appeal for lack of credible evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice. Furthermore, the remaining documentation submitted by the petitioner with this motion is not new evidence, and therefore will not be considered. Similar to the requirements for submitting

evidence on appeal, as a result of the director's notice of intent to revoke, the petitioner was made aware of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was revoked. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988) (evidence requested by the director prior to the adjudication of the visa petition that is subsequently submitted by the petitioner on appeal will not be considered).

Consequently, the previous decisions of the director and the AAO are affirmed.

Beyond the decision of the director, the record does not demonstrate that the beneficiary would be employed in the United States in a primarily managerial and executive position. The beneficiary's proposed job responsibilities are described on the nonimmigrant petition as being in charge of the daily operation of the company and hiring and firing employees. In addition, on the U.S. company's Quarterly Wage and Withholding Report for June 1997 through July 1997, the time period during which the petition was filed, the petitioner identified the employment of three individuals, whose positions and job duties are not provided. The evidence is insufficient to demonstrate the beneficiary's proposed employment as a manager or executive. Moreover, contrary to counsel's statement on appeal, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). For this additional reason, the petition will be denied.

The AAO also notes that the beneficiary has had eight visa petitions filed on his behalf from January 1995 through April 2002. Of these eight petitions, three were denied, three were approved, and two were revoked. This discredits the process developed for the proper adjudication of visa petitions, and is an unacceptable Citizenship and Immigration Services (CIS) practice. The director should review and revoke the beneficiary's most recently approved petition, valid from May 22, 2002 through April 20, 2004. Additionally, as the beneficiary's nonimmigrant visa has expired, pursuant to the regulation at 8 C.F.R. § 214.2(a)(3), the beneficiary is required to have departed the United States. If still in the U.S., the beneficiary is in violation of his status.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the decisions of the director and the AAO will be affirmed and the petition will be denied.

ORDER: The petition is denied.